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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re the Marriage of ZDENKA and  
HERMAN ASTER.

H034855  
(Santa Clara County  
Super. Ct. No. FL086124)

ZDENKA ASTER,

Respondent,

v.

HERMAN ASTER,

Appellant.

Herman Aster returns to this court for a "final resolution" of his dispute with his former wife, respondent Zdenka Aster.<sup>1</sup> On this fifth occasion appellant seeks review of an order denying his peremptory challenge brought under Code of Civil Procedure section 170.6, subdivision (a)(2),<sup>2</sup> and striking his accompanying affidavit pursuant to section 170.4, subdivision (b). We will affirm the order.

<sup>1</sup> Respondent, to whom we will refer as "Zdenka" for convenience, has not filed a response.

<sup>2</sup> All further statutory references are to the Code of Civil Procedure.

### *Background*

Appellant has brought multiple challenges to superior court orders over the 10-year history of the litigation between him and Zdenka. All of those rulings have been upheld on appeal, and on the last occasion (H032641) appellant was ordered to pay sanctions for pursuing a frivolous appeal under California Rules of Court, rule 8.276(a). The present challenge appears to have been precipitated by an order by the Honorable Mary E. Arand on July 27, 2009. That order directed appellant to bring to court a \$35,187.86 dividend check he had received from British Petroleum (BP) and turn it over to Zdenka. Appellant had 20 days, until August 10, 2009, to comply with the order; if he did not do so, the court would instruct BP to stop payment on the check and reissue it to Zdenka.

On August 13, 2009, appellant filed a peremptory challenge under section 170.6, on the ground of "prejudice" toward him. Appellant explained that "Judge Mary Arand developed too cozy relation with attorney of opposing party Dolly Ares . . . and hostile to me to the extent of issuing asset disposition orders while Case 08-1563 is pending in Supreme Court of United States and confiscating orders in the matter of certain British Petroleum Prudhoe Bay securities while Case 108CV102611 is pending in Civil division of this court. Orders, between other, with purpose to collect attorney fees. [¶] Further, authorizing attorney Dolly Ares to conduct proceedings of Examination with questions as impertinent as disclosure of Social Security number to facilitate more extortion."

Appellant did not attach a proof of service to this document, a fact noted by the court in its ensuing order.<sup>3</sup> Addressing the merits of the challenge and the apparent assertion of actual bias, Judge Arand made the following findings. First, appellant's

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<sup>3</sup> The only proof of service in the record is attached to a "LETTER RE: PREJUDICE" written and served the previous day on Zdenka's attorney. The proof of service, but not the letter, bears a filing stamp in superior court.

section 170.6 motion was untimely. The family law case had been reassigned to Judge Arand for all purposes on March 7, 2008, and appellant had first appeared before her on April 21, 2008. He therefore had notice of her assignment clearly as of that hearing date. Appellant then had 10 days to submit a section 170.6 challenge, but did not do so until almost 16 months later, after eight hearings before Judge Arand.

Judge Arand then addressed what appeared to be an allegation of actual bias under section 170.3, subdivision (c)(1). Appellant's statement, she found, did not contain any *facts* justifying disqualification, but consisted merely of complaints about past rulings she had made. Appellant's belief that the judge was "too cozy" with respondent's counsel was insufficient to support his request.

Accordingly, on August 21, 2006, the court denied the section 170.6 peremptory challenge and struck the affidavit under section 170.4, subdivision (b). This appeal followed.<sup>4</sup>

### *Discussion*

It is difficult to discern the gravamen of appellant's argument. He relates a brief history of his failed relationship with his attorney, who together with Zdenka's counsel, "started to conspire against [his] interests." He mentions the "strategy to drive [him] out" of his house and "confiscate" his half of securities he says were already divided, and he asserts fraud in the division of some other securities. He notes that "[t]he last attempt to sell the house, appealed as H032641, failed even before the corresponding decision of Supreme Court of US in 08-1563."<sup>5</sup>

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<sup>4</sup> "An order striking a statement of disqualification is not appealable; it may only be challenged by a petition for writ of mandate filed 'within 10 days after service of written notice of entry of the court's order . . . .' (Code Civ. Proc., § 170.3, subd. (d).)" (*Carl v. Superior Court* (2007) 157 Cal.App.4th 73, 75.)

<sup>5</sup> H032641 was appellant's fourth appeal in this family law matter. On that occasion the superior court issued an amended order for the sale of the parties' house to ensure payment of the money appellant owed Zdenka resulting from the division of marital

But no argument accompanies this history. After his summary of the proceedings (including subsequent orders not before us in this appeal), appellant says only, "I, the Appellant beg the Court of Appeal to consider my Peremptory Challenge and be instrumental in appointment of a Superior Court judge not indebted to attorney Dolly Ares to review the case FL086124." Appellant makes no attempt to excuse the delay in filing his peremptory challenge or his affidavit, nor does he cite any factual basis for disqualification besides his unhappiness with Judge Arand's rulings. In short, no error is shown or even suggested in this appeal.

*Disposition*

The order is affirmed.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.

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assets. We affirmed the order and imposed the appellate sanctions referred to earlier. The number 08-1563 was assigned to the case while it was pending in the California Supreme Court.